

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

AUTOTOTE ENTERPRISES, INC.<sup>1</sup>

Employer

and

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 371, AFL-CIO

Petitioner

Case No. 34-RC-2067

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer operates off track betting facilities located throughout the State of Connecticut at which customers can place bets and collect winnings on horse races, dog races and jai alai games that are simultaneously broadcast from throughout the United States. Solely involved in this proceeding is its facility located at Windsor Locks, Connecticut (herein called the Windsor Locks facility). The Petitioner seeks to represent a unit of approximately 37 full-time and regular part-time mutuel tellers, official mutuels and vault dealers at the Windsor Locks facility, excluding program/lottery/admissions clerks (herein called clerks), maintainers and technicians. Although otherwise in accord

---

<sup>1</sup> The Employer's name appears as corrected at the hearing.

as to the scope and composition of the unit, the Employer contends that the approximately 13 clerks and the 5 maintainers should also be included in the petitioned-for unit.<sup>2</sup> For the reasons noted below, I find merit in the Employer's contention that the clerks should be included in the petitioned-for unit, but find, contrary to the Employer, that the maintainers do not share a sufficient community of interest to require their inclusion in the unit found appropriate herein.

1. Overall Operations and Terms and Conditions of Employment

Primarily responsible for the overall operation of the Windsor Locks facility is Barbara O'Brien. Reporting directly to O'Brien are Assistant Managers Jared Agogliatti and George Doak. Agogliatti assists O'Brien in the direct supervision of the mutuel tellers, official mutuels, vault dealers and clerks. In this regard, O'Brien prepares the annual evaluations for the mutuel tellers, official mutuels and vault dealers. Although Agogliatti prepares the annual evaluations for the clerks, he submits them to O'Brien for review and approval. Doak is in charge of the maintenance of the facility and directly supervises the maintainers.

All employees are licensed by the State of Connecticut. However, each license is specific to each job classification. Thus, for example, mutuel tellers must have a mutuel teller license and maintainers must have a maintainer license. To obtain the appropriate license, employees fill out identical application forms and pay a fee. The record indicates that there is no special training or education required to obtain the different licenses and there is no evidence that applicants are required to take any test in order to obtain a license. However, with the exception of the official mutuels and vault dealers, employees are restricted from performing job duties outside the parameters of their license. Thus, the license issued to the official mutuels permits them to perform the duties of vault dealers and mutuel tellers, and the license issued to the vault dealers permits them to perform the duties of mutuel tellers. The State of Connecticut also prohibits mutuel tellers, official mutuels and vault dealers from placing bets at any gambling facility. The State of Connecticut allows clerks and maintainers to place bets at the Windsor Locks facility and any gambling facility during their non-work time.

---

<sup>2</sup> The record is silent as to number and nature of the duties of the technicians and the parties have agreed to exclude them.

Beyond obtaining the necessary license, the Employer requires different qualifications for each job. Thus, clerks, like the mutuel tellers, must be capable of proper money handling and customer relations; vault dealers must have a high school diploma or equivalent and a knowledge of racing, wagering and have experience in money handling and computers; official mutuels must have the same skills as vault dealers in addition to prior pari-mutuel experience, strong customer service skills with a preference for prior supervisory experience. Unlike the employees noted above, the Employer does not require any special qualifications for a maintainer position.

All employees are eligible for the same benefits, subject to the same work rules and policies, are hourly paid and eligible for overtime, punch a time clock, receive the same customer service training, and share the same break room, restroom and parking lot. While not entirely clear, it appears that all employees except the official mutuels and vault dealers are required to wear a uniform, which consists of a shirt that comes in various colors.<sup>3</sup> There is no history of collective bargaining for any of the Employer's employees.

a. Mutuel Tellers, Vault Dealers and Official Mutuels

*Mutuel Tellers:* Mutuel tellers sell and cash parimutuel tickets and vouchers purchased by customers at two cashier lines on the first floor and two cashier lines on the second floor. In performing this function, mutuel tellers answer customer's questions about the facility and betting procedures, and provide customers with daily racing information. While assigned to the cashier lines on the first floor, mutuel tellers may also work in the money/cash room during the temporary absence of the vault dealer, and may work alongside official mutuels when the latter work on the cashier lines. Mutuel tellers who work on the second floor cashier lines communicate with the vault dealers and official mutuels during the course of the day via a "tube".

*Vault Dealers:* Vault dealers work in the money/cash room located behind the cashier lines on the first floor. They are responsible for distributing money to, and receiving money from, both the mutuel tellers and the disputed clerks, and accounting for such money. More specifically, vault dealers distribute "money drawers" to each mutuel teller at the beginning of the shift and reconcile each mutuel teller's "money drawer" at the end of the shift. Each of the disputed clerks also receive a money drawer

---

<sup>3</sup> The record does not indicate who supplies the shirts or whether the shirts bear any insignia.

from the vault dealer. However, they return all of their admission money in a single bag, and the remainder of their money is combined into a single drawer and returned to the vault dealers at the end of the shift. Vault dealers are also responsible for issuing membership cards to customers in the Employer's Trophy Club.<sup>4</sup> Such membership cards are issued after Trophy Club applications are provided by the customers to the clerks. Vault dealers also handle telephone betting at the facility. Vault dealers are also authorized by the State of Connecticut to be responsible for the facility in the absence of the Manager or Assistant Manager.

*Official Mutuels:* Official mutuels also work in the money/cash room located behind the cashier lines on the first floor, and may also work on the cashier lines selling parimutuel tickets and vouchers. Similar to the vault dealers, official mutuels may distribute money to, and collect money from, the mutuel tellers and the disputed clerks. They also answer customer questions, verify bank deposits, and fill out various forms required by the State. The official mutuels are also authorized by the State of Connecticut to be responsible for the facility in the absence of the Manager or Assistant Manager.

b. Clerks

All of the disputed clerks work on a regular part-time basis. Their primary work location is at the entrance to the Windsor Locks facility, where they answer customer questions and sell admission tickets, State of Connecticut lottery tickets, programs, newspapers, and tip sheets. On big race days or during special events, the clerks may perform similar functions near the cashier lines on the second floor of the Windsor Locks facility. The clerks also make payouts to customers with winning lottery tickets. For payout amounts over \$600, clerks must go to the money/cash room and get the payout money from the vault dealers or official mutuels. As previously noted, they receive their initial money directly from the vault dealers or official mutuels at the beginning of their shift.

As noted above, clerks receive applications from customers who wish to join the Trophy Club and forward those applications to the vault dealers for further processing. The clerks also distribute Trophy Club certificates to customers who have earned points

---

<sup>4</sup> The Trophy Club is a program customers may join which earns them points for betting at the facility. These points are redeemable for admission, food, merchandise and betting vouchers.

for redeemable items. Clerks have work-related contacts with mutuel tellers, official mutuels and vault dealers when they process Trophy Club applications, receive and return money, and when dealing with and directing customers. As previously noted, the clerks license prohibits them from performing duties outside of their job classification, nevertheless, they are eligible to bid into open positions for mutuel tellers, official mutuels and vault dealers and would merely have to obtain the appropriate license once they are awarded a new position. The record does not reflect whether there have been any such transfers.

c. Maintainers

As noted above, the maintainers report directly to Assistant Manager Doak. Unlike the mutuel tellers, official mutuels, vault dealers and clerks who handle money, betting procedures and customer service, maintainers are solely responsible for cleaning and maintaining the building and equipment. In this regard, the maintainers work throughout the facility sweeping up discarded betting tickets from the floors, cleaning bathrooms, repairing TV monitors and other machinery, changing light bulbs and removing the trash. Unlike other employees, maintainers also work outside the facility cleaning parking lots, shoveling snow, and sweeping sidewalks, stairs and ramps. Their only customer contact would be incidental to their performance of the above-described duties. In addition to the foregoing and unlike other employees, maintainers may also be required to perform their duties at the Employer's other Connecticut facilities, and perform courier functions transporting paperwork, unused furniture and other equipment between the Windsor Locks facility and the Employer's other Connecticut facilities.

2. Analysis and Conclusion

The Board has long recognized that there is no statutory requirement that a unit for collective bargaining be the most appropriate unit. Rather, the Act only requires that the unit sought be "an" appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Therefore, a petitioner is not required to seek the "most" appropriate unit of employees, unless an otherwise appropriate unit does not exist. *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963). The essential inquiry is whether a particular grouping of employees share a community of duties and interests sufficiently distinct from other employees so as to warrant their establishment as a separate unit. In determining the

appropriate unit, the following community of interest criteria are considered: degree of functional integration, common supervision, employee skills, interchangeability, contact among employees, similarities in wages, hours, benefits and other terms and conditions of employment, and bargaining history. *Kalamazoo Paper Box Co.* 136 NLRB 134 (1962); *Franklin Mint Corp.*, 254 NLRB 714 (1981).

Based upon the above and the record as a whole, I find that the clerks share a sufficient community of interest with the mutual tellers, official mutuels and vault dealers to require their inclusion in the petitioned-for unit. In reaching this conclusion I note specifically that the clerks along with mutual tellers, official mutuels and vault dealers share common supervision, work under the same terms and conditions of employment, have regular work-related contacts, and utilize similar skills in performing similar job duties involving customer service, the exchange of money, and the placing of bets. Accordingly, I shall include the clerks in the petitioned-for unit.

With regard to the maintainers, I find that they do not share a sufficient community of interest with the other employees in the unit found appropriate to require their inclusion therein. In this regard, I specifically note that the maintainers are separately supervised and perform functionally distinct job duties. Thus, unlike employees in the unit found appropriate, the maintainers have no involvement with customer service, the exchange of money, or the placing of bets, and may be called upon to work outside the facility and at other Employer facilities. Accordingly, I shall exclude the maintainers from the petitioned-for unit.

I find no merit to the Employer's argument that excluding the maintainers would result in an otherwise inappropriate residual unit. Although the Employer argues in its post-hearing brief for a "facility-wide unit", it has failed to explain its agreement to exclude the technicians from the petitioned-for unit. Furthermore, the Board has held that separate units of employees performing maintenance functions of the type involved herein can be appropriate. *Silver Spur Casino*, 192 NLRB 1124 (1971); cf. *Harrah's Club*, 187 NLRB 810 (1971).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time mutual tellers, official mutuels, vault dealers and program/lottery/admissions clerks employed by the Employer at its Windsor Locks, Connecticut facility; but excluding maintainers, technicians and guards, professional employees and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

**Eligible to vote:** those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

**Ineligible to vote:** employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 371, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7)

days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before March 18, 2004. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 25, 2004.

Dated at Hartford, Connecticut this 11<sup>th</sup> day of March, 2004.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director  
National Labor Relations Board  
Region 34

420-2930  
420-2963  
420-2987  
420-2990  
440-1760-9167-4533